

for The Defense

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Internet Child Pornography

Knowing "Possession" or "Receipt" of Images

By Donna Elm, Federal Public Defender's Office

The Ninth Circuit came out with a new case regarding computer searches that can apply to our State child pornography cases. In *United States v. Romm*, No. 04-10648, slip op. (9th Circuit July 24, 2006), the defendant's laptop was searched when crossing the border into the U.S. from Canada. Customs agents found child pornography in his computer internet cache. There is a broad right to search computers at border crossings, so the 4th Amendment was not implicated.¹ Nonetheless, the case is important for its discussion of when a pornographic image from the internet cache has been "received" or "possessed" by the computer user.

Preliminarily, it is important to note the distinction between caching and downloading (saving) images. When a computer user goes onto the internet, the computer keeps a record of whatever was looked at in its internet cache. Like deleted images that have been removed to the "trash," these items remain in the cache until they are again deleted from it – such as when a user "empties" the "trash" bin on his system. Additionally, many systems will automatically delete old items from caches at a certain point. Also like "trash," a user can go back to the cached images (until they are deleted) and pull them up on the screen again. Images that are viewed on the internet can also be manipulated (for

instance, enlarged or enhanced) while viewing them, and those manipulations, too, will be reflected in the internet cache (that records a number of things transpiring during viewing).

Caching internet images is different from copying or saving them. In "downloading" images, users take affirmative steps to place the pictures on a computer drive where they will be preserved like other "saved" files. Those saved images can, of course, be pulled up on the screen, looked at, and manipulated anytime, without the risk of being lost in the cache or automatically deleted.

Romm had child pornography in his internet cache. He had neither "saved" nor "copied" any of it from the internet to his laptop. He had, however, enlarged some images while viewing them on his screen, and the internet cache had recorded that he had looked at images for five minutes before deleting them. The issue was: did this suffice to establish that Romm had "possessed" or "received" child pornography?

The federal child pornography statute, like Arizona's, prohibits possession of this contraband.² Romm argued that he had not "possessed" the cached images. Possession or receipt of electronic images is not defined in the criminal

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code, see ARS § 13-3551, nor is it defined in the federal code. Consequently, the Ninth Circuit concluded that it would look at the “plain meaning” of that term. Black’s Law Dictionary defined possession as: “the fact of having or holding property in one’s power; the exercise of dominion over property.” Black’s Law Dictionary 1183 (7th ed. 1999). Thus to establish “possession,” the prosecution must prove “a sufficient connection between the defendant and the contraband to support the inference that the defendant exercised dominion and control over it.” *United States v. Carrasco*, 257 F.3d 1045, 1049 (9th Cir. 2001).

There has been federal case law holding that defendants “knowingly possess” or “receive” pornography when they download or copy/save it. E.g., *United States v. Mohrbacher*, 182 F.3d 1041, 1048 (9th Cir. 1999). The act of saving it signifies the intent to “keep” or preserve for one’s own use those pictures. Thus saving an image to one’s computer is prima facie evidence of exercising dominion or control over it. However, it was clear that Romm had not “downloaded” the images to his laptop’s drives.

Court have been concerned about distinguishing between the innocent receiver of pornography (such as porn delivered in an unsolicited “pop-up,” or the wildlife enthusiast looking up information on the North American beaver) and those who knowingly seek out and intend to view contraband. They have started to articulate factors that can connote when an internet image has been “knowingly possessed.” (1) Obviously, when a picture has been saved or copied to a laptop drive, it has been possessed. *Mohrbacher*. But also, (2)

attempting to copy an image, even unsuccessfully, indicates sufficient intent to possess it. *United States v. Tucker* (“*Tucker II*”), 305 F.3d 1193, 1265-66 (10th Cir. 2002), cert. denied, 437 U.S. 1223 (2003). Moreover, (3) when the user organizes his computer system for purposes of viewing child pornography, it is quite apparent that he “knowingly possessed” any porn in his cache. *State v. Berger*, 212 Ariz. 473, 134 P.3d 378 (2006) (flagging child pornography sites in his “favorites” list, and setting up his own “child pornography” directory). In fact, (4) if there are a superabundance of these images in the cache, that alone can indicate the intentional or knowing possession of them. *Id.* (showing his intent to seek out those images). But where there are only a few pictures in the internet cache, whether is was innocently or “knowingly possessed” turns on what he did with the images he had looked at. In Romm’s case, there was evidence that he had looked at the pictures for about five minutes each, and had enlarged the “thumbnail” miniatures for better viewing. The Ninth Circuit concluded that those acts distinguished his viewing from accidental or pop-up viewing. So, (5) manipulation of cached images can establish “knowing possession” of them.

The importance of manipulating those internet cache images was also emphasized in Arizona’s Division One case, *State v. Speers*, 209 Ariz. 125, 98 P.3d 560 (App. 2005). In *Speers*, the defendant’s internet cache contained sixteen “thumbnail” images as well as a couple that had been enlarged. *Speers* argued that there was no evidence that he “knowingly saved” those images to his automatic cache. He was correct of course, but the issue is “knowing possession,” not “knowing saving,” – and knowing possession was demonstrated by the enlargement of those two. Incidentally, the jury concurred, acquitting him of the sixteen thumbnail images and convicting him of the two enlargements only.

Note that in both *Romm* and *Tucker II*, the federal courts also relied upon statements that the defendants had made or other collateral information confirming that this was prurient viewing rather than unintentional exposure to porn. Romm told agents he had googled child pornography websites, and would look at photos he liked for about five minutes. Tucker had

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confirmed that he knew about the internet cache and how to access it.

There is an intriguing analysis offered by Judge Kleinfeld's dissent in the case of *United States v. Gourde*, 440 F.3d 1065, 1080-02 (9th Cir. 2006). Judge Kleinfeld opined that one no more "receives" or "possesses" an image by looking at it on the internet through a computer than one "receives" or "possesses" the Mona Lisa by looking at it in the Louvre. Although that is a very attractive analogy, having images in one's internet cache is more like having them in an art history book, something one can carry and view from time to time. However, if the user was not very computer-literate, he might not know that he had a cache where he could review those images. Knowledge of the stored images is critical; if a user does not know that his computer may be saving illicit images in its caches, he may not "knowingly possess" child pornography there. This issue was conceded in *United States v. Bass*, 411 F.3d 1198, 1201-02 (10th Cir. 2005) – but his conviction was sustained because he had to use special software to permanently delete the images from his computer, indicative that he knew they were there.

Courts are clarifying what factors it takes to prove "knowing possession or receipt" of internet child pornography. Possible loopholes in the statutes that we could once argue are being shorn up by case law. However after *Romm*, there is still room for innocence for the ignorant computer operator with a small amount of un-manipulated child pornography in his internet cache.

(Endnotes)

¹ Nevertheless, warrantless and suspicionless searches of laptops is raising some eyebrows, even in this post-9/11 world. See <http://calapp.blogspot.com/2006/07/us-v-Rom-9th-cir-July-24-2006.html>.

² Arizona's statute prohibits: "distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing, or exchanging" kiddie porn. ARS § 13-3553(a)(2). However, the lion's share of the cases fall within the possession/receipt categories. The federal counterpart prohibits simply "possessing" it. 18 U.S.C. § 2252(a)(5)(B). Significantly, neither statute prohibits mere "viewing" of pornographic pictures, perhaps because that can be done innocently, so would make the statute "overbroad."



Writers' Corner

Garner's Usage Tip of the Day:



Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including *A Dictionary of Modern Legal Usage*, *The Winning Brief*, *A Dictionary of Modern American Usage*, and *Legal Writing in Plain English*. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at www.us.oup.com/us/apps/totd/usage. Garner's *Modern American Usage* can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

due to.

The traditional view is that "due to" should be restricted to adjectival uses in the sense "attributable to," usually following a noun {mistakes due to carelessness} or a "-be" verb {the mistakes were due to carelessness}.

Despite that traditional view, the phrase is commonly used as a preposition or conjunctive adverb meaning "because of," "owing to," "caused by," or "on grounds of" -- e.g.: "Due to [read 'Because of'] a mistake in Lincoln-Mercury's press material, . . . the maximum cargo room listed for the Villager in our 1992 review was incorrect." Tom Incantalupo, "Road Test: Nissan Quest," *Newsday* (N.Y.), 16 Sept. 1994, at A63.

"Due" followed by an infinitive is not a form of the phrase "due to," although it looks deceptively similar -- e.g.: "A last-ditch round of the so-called 'framework' talks is due to open in Washington later today." Jonathan Annells, "Hurd Rallies Japan to Free Trade Cause," *Evening Standard*, 19 Sept. 1994, at 37.

The stylist may want to forgo even correct use of what one writer calls a "graceless phrase, even when used correctly "Avoid it altogether." Lucile V. Payne, *The Lively Art of Writing* 148 (1965). ✨

Justification Defense on Misconduct Involving Weapons Charges

By Diane Alessi, Maricopa County Superior Court Criminal Staff Attorney and the Hon Robert Gottsfield, Maricopa County Superior Court

Can justification be a defense to a misconduct involving weapons (prohibited possessor) charge?

We believe the answer is “yes” if the use of force is immediately necessary under the circumstances.

A person who possesses a deadly weapon or firearm when he or she is prohibited by law from possessing the weapon is guilty of misconduct involving weapons, A.R.S. §13-3102(A)(4). “Prohibited possessor” is defined at A.R.S. §13-3101(6), and refers most often to a convicted felon whose civil rights to possess or carry a firearm has not been restored.

Under A.R.S. 13-404(A), self-defense constitutes justification for conduct if: (1) a reasonable person would believe (2) that physical force is *immediately* necessary (3) to protect oneself against another’s use or attempted use of unlawful physical force. A defendant is entitled to an instruction on self-defense if there is the slightest evidence of justification for his act. The “slightest evidence” is that evidence which tends to prove a hostile demonstration which might be reasonably regarded as placing the accused in imminent danger of losing his life or sustaining great bodily harm. *State v. Andersen*, 177 Ariz. 381, 386, 868 P.2d 964 (App. 1993), rev den, cert. den 512 U.S. 1224 (1994).

Clearly, the prohibited possessor cannot arm himself in advance for personal protection because he lives in a rough neighborhood, was threatened, fears for his life, or believes he will be subject to gang violence. *In re Roy L*, 197 Ariz. 441, 4 P.3d 984 (App. 2000) (juvenile’s statement that his life had been threatened the day before his arrest for possession of a firearm by a minor and was carrying the gun for self-defense was insufficient to raise a justification defense absent evidence that the use of force

was immediately necessary). If caught with a weapon before the feared danger actually occurs, the prohibited possessor may not claim a justification defense as a defense against a misconduct involving weapons charge.

However, if the prohibited possessor is armed with a gun and can prove that under the circumstances then prevailing that he used the weapon solely in self-defense or defense of others because the use of deadly force was immediately necessary, the jury should be instructed regarding the defense of justification as to a misconduct involving weapons charge. *See, State v. Buggs*, 167 Ariz. 333, 336, 806 P.2d 1381 (App. 1990) (affirming defendant’s conviction for aggravated assault because fight had broken off; case was another example of “settled authority to the effect that after a fight has broken off one cannot pursue and kill merely because he once feared for his life”).

Although there are no Arizona appellate court decisions directly on point, we believe that *Roy L* and *Buggs* support the proposition that the justification defense is available to a prohibited possessor when the use of force, including deadly physical force, is immediately necessary to prevent imminent harm. In this respect, Arizona would follow those jurisdictions that have found that the right to momentarily defend oneself and others from physical force is of paramount interest, even in the case of a felon whose right to bear arms has not been restored. *See*, 39 A.L.R.4th 967 (1985).

Thus, in *United States v. Panter*, 688 F.2d 268 (5th Cir. 1982), the Fifth Circuit Court of Appeals held that a convicted felon who was prohibited from possessing a firearm under federal law was entitled to possess a firearm momentarily and in self-defense from an immediate assault. The defendant was tending bar when a patron stabbed him in the abdomen. He grabbed the bar owner’s gun, shot the

assailant, and then placed the gun on the bar and left it there.

In *Panter*, the court stated the defense would be allowed when “a convicted felon, reacting out of a reasonable fear for the life or safety of himself, in the actual, physical course of a conflict that he did not provoke, takes temporary possession of a firearm for the purpose or in the course of defending himself.” 688 F.2d at 272. Other federal circuit courts of appeal have similarly allowed the justification defense when a defendant establishes the following four elements: (1) he was under an unlawful and present, imminent, and impending threat of death or serious bodily injury; (2) he did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) he had no reasonable legal alternative to violating the law; and (4) there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. *United States v. Rice*, 214 F.3d 1295, 1297 (11th Cir. 2000). See also, *United States v. Newcomb*, 6 F.3d 1129 (6th Cir. 1993) (justification defense allowed where defendant briefly possessed shotgun and shells after disarming dangerous individual); *United States v. Paolello*, 951 F.2d 537 (3rd Cir. 1991) (justification defense allowed where, after knocking gun out of attacker’s hand to protect third person, defendant picked gun up off ground and ran with it to prevent attacker from getting it).


Other courts have set the parameters concerning when the defense is allowed in resolving cases whose facts were found not to support the defense. For example, in *State v. Castrillo*, 112 N.M. 766, 819 P.2d 1324 (1991), the New Mexico Supreme Court stated that an objective test should be employed in determining whether a prohibited possessor was entitled to a justification defense. This test asks whether a reasonable person in the defendant’s position at the time and place and subject to the defendant’s prior experiences, would have acted the same way under the same circumstances.

Similarly, in *State v. Mowell*, 267 Neb. 83, 672 N.W.2d 389 (2003), the Nebraska Supreme Court held that a defendant charged with, among other offenses, being a felon in

possession of a firearm, was not entitled to a jury instruction on self-defense where the victim, who believed he was cheated in a drug transaction, told the defendant “it’s not over” when he left the defendant’s apartment. The court found this threat was merely a generalized and non-immediate fear, and a “choice of evils” defense (to violate the law or lose one’s life) is available only to a specific and immediate harm.

As noted in *Mowell*, in addition to a justification defense where the use of force was allegedly immediately necessary, the jury should also be instructed on the necessity defense (A.R.S. §13-417). This defense is available where “the person had no reasonable alternative to avoid imminent public or private injury greater than the injury that might reasonably result from the person’s own conduct.” As with the justification defense, the necessity defense is not available if the person placed himself in the situation where he would have to use a weapon (A.R.S. §13-417(B)) until he has withdrawn or attempted to do so, but is prohibited by the other party from withdrawing (A.R.S. §13-404(B)(3)).

You might also consider the defense of duress (A.R.S. §13-412(A)). This defense applies when “a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another....” Duress, like the necessity and justification defenses, requires that the individual asserting the defense not provoke the attack or place himself in the situation where he would subject himself to the unlawful physical force of another (A.R.S. §13-412(B)).

Moreover, both the necessity and duress defenses have a provision not present for any of the justification defenses which may, in the case of an alleged prohibited possessor facing other charges, preclude the use of necessity and duress for those other charges: neither defense may be asserted by a defendant for offenses involving homicide or serious physical injury (A.R.S. §13-412(C) and §13-417(C)). The provisions, however, would not bar the prohibited possessor from using justification, necessity or duress as defenses to the prohibited possessor charge. 

The Public Defender Creed

“I am a public defender. I am the guardian of the presumption of innocence, due process, and fair trial. To me is entrusted the preservation of those sacred principles. I will promulgate them with courtesy and respect but not with obsequiousness and not with fear for I am partisan; I am counsel for the defense. Let none who oppose me forget that with every fiber of my being I will fight for my clients. My clients are the indigent accused. They are the lonely, the friendless. There is no one to speak for them but me. My voice will be raised in their defense. I will resolve all doubt in their favor. This will be my credo; this and the Golden Rule. I will seek acclaim and approval only from my own conscience. And if upon my death there are few lonely people who have benefited, my efforts will not have been in vain.”

— James Doherty



The following biographical information about the author of this creed was taken from “The James Doherty Papers” Website, located at <http://nejl.wcl.american.edu/DOHERTY.HTML> , which contains an extensive collection of materials from Mr. Doherty’s long and impressive career as an accomplished trial attorney, author and lecturer. The Editors of for The Defense extend their thanks to Paul Lovelis, an attorney with the Pima County Public Defenders Office, for providing us with this information.

James J. Doherty was born in Belfast (Northern) Ireland in 1920. At a young age he immigrated with his family to the United States and they settled in Chicago. After high school he followed in his father’s footsteps and went to work for the Central Illinois Railroad. Convinced by his Railroad co-workers to pursue a career in law, Doherty was graduated from the DePaul University School of Law in 1950, although he continued to work part-time for the Railroad for many more years.

In 1956 Doherty joined the Cook County Public Defender’s Office as an assistant public defender in the appeals division. From 1972 to 1986 Doherty served as chief Public Defender of Cook County. And from 1986 to 1997, when he retired, he served as head of the appellate division.

Doherty is known for having pioneered the concept that the police and prosecution are obliged to turn over evidence favorable to the defense. He also advocated the concept that potential jurors should not be excluded from a jury because they are opposed to the death penalty. He argued or helped prepare briefs for several cases before the United States Supreme Court, using these legal issues as the basis for his appeals.

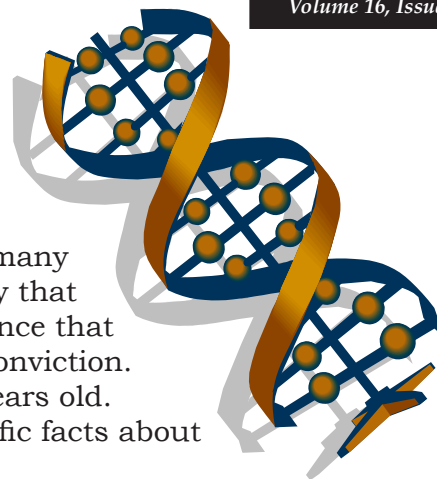


Practice Pointer

When DNA is not Foolproof

By Vivian Arnold-Bethel, Mitigation Specialist

As a Mitigation Specialist, I have prepared numerous reports for many of our clients over the past five years, however it was only recently that I worked on my first case where DNA findings were the only evidence that linked our client to a crime that ultimately led to his arrest and conviction. The offense occurred 12 years ago, when our client was just 17 years old. While working on this case, I learned of some enlightening scientific facts about bone marrow transplants of which we should all be aware.



Recent research studies have found that recipients of a bone marrow transplant can also receive the donor's DNA (see, e.g., "Bone Marrow Donors Risk Identity Mix-up," October 27, 2005, NewScientist.com News Service). Until recently, bone marrow transplants involved destroying the patient's own bone marrow. In such cases their blood will contain the DNA profile of the donor alone. But some treatments in recent years, such as therapies to treat sickle cell disease, retain some of the patient's original bone marrow, so their blood can contain a mixed DNA profile. Mixed profiles can also occur when DNA is collected from swabs taken from inside of the cheek, rather than blood samples. Cheek cells of a bone marrow recipient will contain mostly their own DNA, but can become contaminated with the donor's DNA over time. So, for a more accurate determination of spotting a transplant recipient, DNA should be taken from both cheek and blood samples of an individual.

A client may have had a bone marrow transplant and not even know it, especially if it occurred during their childhood. Primarily it would be common with clients who were either abandoned, or adopted. Although the chances of a case arising out of a DNA mix-up may be rare, this information is still important to note because with each new discovery, DNA evidence alone may not be as flawless as perceived. ✨

Quick Look at Immigration

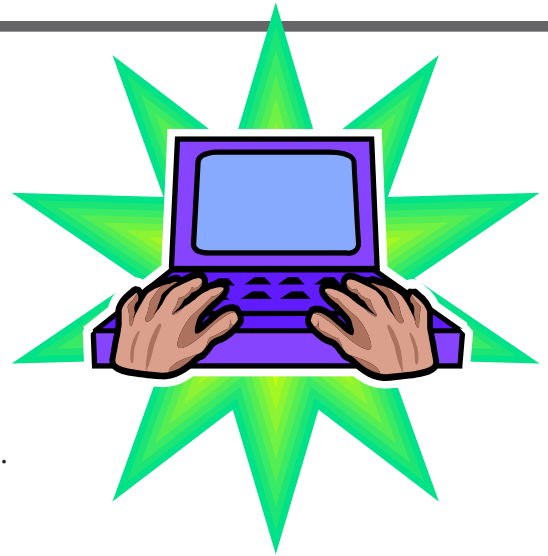
By James Wilson, Defender Attorney

This is a complex, changing area that requires extensive, ongoing CLE. For example, in the near future, helpful resources, such as a chart, will be available through this newsletter. Here are five key points to always keep in mind:

1. If you can plead someone to 364 days in jail, as opposed to one year, he may qualify from some release from deportation.
2. If you can plead someone to solicitation to commit an offense, this is good.
3. Do your best to avoid plea agreements that require factual bases specifying domestic violence or use of a weapon.
4. Don't plead someone and stipulate to the entire police report as the factual basis.
5. Avoid anything involving the sale, transport, or drugs or an attempt (but solicitation is okay). ✨

Microsoft Word Tips

By Susie Graham, Technology Trainer



❖ Zoom In And Out With Your Mouse

You can use the scroll button on your mouse to zoom in and out of documents quickly. Just hold down the **Ctrl key** and roll the scroll wheel forward to get a closer view of the document, or roll it back to shrink it.

❖ Format Painter



When you click on this icon on your toolbar, the Format Painter copies the text formatting of the area where the cursor is located. If you select an entire paragraph or cell and then click on the icon, Format Painter will also copy the paragraph or cell formatting. You can then “paint” the copied formatting into other parts of the document by simply highlighting text. By double-clicking on the Format Painter icon, you can apply the copied formatting repeatedly until you press Esc.

❖ Rearrange Paragraphs With Two Keystrokes

Do you need to swap the second and third paragraphs in the document you’re working on? Don’t waste time dragging text around within your document using the mouse. Just click on the paragraph you’d like to move, hold down Shift-Alt, and move the paragraph up or down using the **arrow keys**. Each press of the arrow key causes the selected paragraph to jump over one adjacent paragraph.

❖ Compare Two Documents Side By Side

Open two documents. Then, from the Window menu of one of the documents, select the **Compare Side By Side** command. If you have only two documents open, the command will automatically choose to compare them. If you have three or more documents open, you’ll have to select which document to compare with the current file.

A **floating toolbar** with two buttons will open. If the button on the left is selected, Word will scroll both documents at the same time. Press the button on the right side of the toolbar to return to where the cursor was located when you started comparing.

❖ Split Document/Edit Two Parts Of A Document

You can display two different parts of a document at the same time. To do this, you can either select the **Split** option from the **Window menu** to display a dividing line in the current window or you can drag down the **tiny divider tool** at the top of the right scroll bar. You can navigate to different parts of the document in each pane by clicking in the pane you want to work in or use F6 to jump between the panes. To Remove the split, select **Remove Split** from the **Window menu** or you can drag the divider bar to the top or bottom of the document. You can also do this in Excel.



Jury and Bench Trial Results

May/June 2006

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group A						
4/20 - 5/1	Reece Armstrong	Gottsfeld	Cohen	CR05-010048-001DT 6 cts. Sexual Conduct with a Minor, F6 Furnishing Obscene Materials to a Minor, F4 2 cts. Sexual Exploitation of a Minor, F2	Not Guilty on all counts.	Jury
5/2 - 5/5	Grashel Davis Ryon Sain Curtis	Heilman	Porello	CR05-012383-001DT Aggravated Assault, F4D	Not Guilty	Jury
5/9 - 5/10	De La Torre, D. Iacob	Akers	Shipman	CR05-011873-001DT Aggravated Assault, F3D	Not Guilty	Jury
5/9 - 5/10	Fischer Robinson Page	Burke	Murphy	CR05-014679-001DT Drive by Shooting, F2D Aggravated Assault, F3D Assisting a Criminal Street Gang, F3D	Mistrial	Jury
5/11 - 5/24	Reece Hales Armstrong	Burke	Basta	CR05-122100-001DT Aggravated Assault, F2D TOMOT, F3 Unlawful Flight, F5 Burglary 2nd°, F3	Guilty	Jury
5/16 - 5/18	Fischer Page	French	Vaitkus	CR05-127261-001DT Aggravated Assault, F4	Guilty	Jury
5/22 - 5/23	Grashel Davis Carson Armstrong	Gottsfeld	Sponsel	CR05-133740-001DT Burglary 3rd°, F4	Guilty - Trial held in absentia	Jury
5/22 - 5/24	Bressler	Duncan	Squires Rand	CR05-013244-001DT Taking Identity of Another, F4	Directed Verdict	Jury
5/30 - 6/5	Guyton Armstrong	Heilman	Shipman Reckart	CR05-142402-001DT TOMOT, F3 Armed Robbery, F2D	Guilty	Jury
6/6 - 6/9	Farney Armstrong	Stephens	Church	CR05-007426-001DT Sale or Transportation of Narcotic Drugs, F2	Hung Jury	Jury

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Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group A (Continued)						
6/13 - 6/21	Farrell Taylor Carson	Ryan	Fuller	CR05-141847-001DT Ct. 1 Armed Robbery, F2D Ct. 2 Aggravated Assault, F3D Ct. 3 Burglary 3°, F4 Ct. 4 Theft, F6 Ct. 5 Resisting Arrest, F6	Not Guilty - Cts. 1 & 2; Directed Verdict - Ct. 5; Cts. 3 & 4 were dismissed the day of trial.	Jury
6/27 - 6/28	Engle	Burke	Sponsel	CR04-013762-001DT TOMOT, F3	Not Guilty	Jury
6/27 - 6/30	Taylor Willmott Sain <i>Armstrong</i>	Akers	Shipman	CR06-006169-001DT TOMOT, F3	Not Guilty	Jury
Group B						
5/22 - 5/31	Bradley/ Blieden	Cole	Church	CR05-102919-001DT Cruelty to Animals/Poultry, F6	Guilty	Jury
6/16 - 6/20	Dominguez	Hicks	Anderson	CR05-013964-001DT Agg. Assault, F6	Guilty	Jury
6/26 - 6/28	Shelley Blieden Urista	Gottsfeld	Gard	CR05-135557-001DT Att. TOMT, F4	Guilty	Jury
Group C						
5/15 - 5/23	Nurmi Salvato Lenz	Sanders	Alegre	CR05-032079-001SE 2 cts. Sexual Conduct w/Minor, F2 Child Abuse, F2	1 ct. Sexual Conduct w/Minor-Directed Verdict 1 ct. Sexual Conduct w/Minor-Guilty Child Abuse, F2-Guilty	Jury
5/31 - 6/6	Dehner	Sanders	Krabbe	CR05-032379-001SE POM, F6	Guilty	Jury
6/5	Braaksma Shoemaker	Arellano	Schultz	CR05-032881-001SE PODD, F2 Prostitution, M1	Guilty	Jury
6/8 - 6/14	Houck	Udall	Starkovich	CR05-140119-001SE Resisting Arrest, M1 Disorderly Conduct, M1	Guilty - Resisting Arrest Not Guilty - Disorderly Conduct	Bench
5/1 - 5/23	Falduto Whalen <i>McDonald</i>	Donahoe	Grimsman	CR04-018462-001DT 2 cts. Child Abuse, F2	Not Guilty Count 1, Hung Count 2, 10 Guilty, 2 Not Guilty	Jury
5/3 - 5/9	Traher Trimble <i>Curtis</i>	Trujillo	Hazard	CR05-010569-001DT POND for Sale, F2	Guilty	Jury

Jury and Bench Trial Results

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Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group D						
5/4 - 5/8	Jackson <i>Curtis</i>	Gottsfeld	Bonaguidi	CR05-131562-001DT Theft, F6	Not Guilty	Jury
5/10 - 5/12	Harris Fusselman	Trujillo	Baker	CR05-129449-001DT MIW, F4	Guilty	Jury
5/16 - 5/23	Knost	Porter	Whitney	CR06-101548-001DT Agg. Domestic Violence, F5	Guilty	Jury
5/17 - 5/30	Jackson Bradley <i>Curtis</i>	Steinle	Rothblum	CR05-009820-002DT Endangerment, F6 Discharge Firearm in City Limit, F6	Not Guilty Endangerment Guilty Unlawful Discharge, Non- dangerous	Jury
5/18 - 5/25	Traher	Trujillo	Valverde	CR05-013987-001DT Resist Arrest, F6	Guilty	Jury
5/24 - 5/31	Strumpf Bradley <i>McDonald</i>	Steinle	Long	CR05-112191-001DT Armed Robbery, F2D	Guilty	Jury
5/30 - 6/1	Cain O'Farrell <i>Browne</i>	Gerst	Bonaguidi	CR05-144278-001DT 3 cts. Agg Assault, F6 Resisting Arrest, F6	Dismissed - 1ct. Agg Assault; Not Guilty - 1ct. Agg Assault; Guilty - 1ct. Agg Assault; Guilty - Resisting Arrest	Jury
6/13 - 6/14	Harris O'Farrell	Mahoney	Valadez	CR05-132323-001DT PODP, M1 Resisting Arrest, M1	Not Guilty - PODP; Guilty - Resisting Arrest	Bench
6/16 - 6/16	Cain	Rayes	Rassas	CR05-129273-001DT POM, F6	Guilty	Jury
6/26 - 6/30	Stone Schreck	Trujillo	Bonaguidi	CR05-136267-001DT Resisting Arrest, F6 Agg Assault, F6 POND, F4 PODP, F6	Guilty - Resisting Arrest; Dismissed - Agg Assault; POND and PODP Hung, 6 Guilty - 2 Not Guilty	Jury
6/27 - 6/29	Cain Charlton	Steinle	Valadez	CR05-014442-001DT Theft, F6	Not Guilty	Jury
6/28 - 6/30	Whalen Charlton	Lee	Bonaguidi	CR05-137665-001DT TOMOT, F3	Not Guilty	Jury

Jury and Bench Trial Results

May/June 2006

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group E						
5/2 - 5/3	Smiley	French	Pollak	CR05-011804-001DT Unlawful Flight, F6	Not Guilty	Jury
5/24 - 6/6	Roskosz	Gottsfield	Wicht	CR05-124369-001DT 5 cts. Agg. Assault, F3D Drive by Shooting, F2D	Not Guilty on All Counts	Jury
6/8 - 6/13	Mays	Gottsfield	Linn	CR05-013294-002DT Burglary 2, F3	Not Guilty - Burglary Guilty of lesser included Trespass	Jury
6/12 - 6/20	Colon	Gama	Voyles	CR05-005150-001DT Agg. Assault, F3D	Not Guilty - Agg. Assault; Guilty of lesser included Assault, M1	Jury
Group F						
4/24 - 5/1	Gaziano / Fluharty	McClennen	Baker	CR05-132219-001SE 6 cts. Sexual Conduct w/Minor, F2 Child Molest, F2	Guilty	Jury
5/1 - 5/3	Turley	Udall	Smith	CR04-042375-001SE Theft Credit Crd. Obt. Fraud Means, F5	Not Guilty	Jury
5/2 - 5/9	Peterson (Advisory Counsel)	McClennen	McGregor	CR05-034814-001SE Aggravated Assault, F4	Guilty	Jury
5/11	Lewis	Stephens	Schneider	CR04-040554-001SE PODD, F4 PODP, F6	PODD - Guilty PODP - Not Guilty	Jury
5/10 - 5/11	Ditsworth <i>Cowart</i>	Udall	Brooks	CR05-145293-001SE Unlawful Use Means Transportation, F5	Guilty	Jury
5/16 - 5/19	Whitney <i>Baker</i> <i>Cowart</i>	McClennen	Schneider	CR05-033683-001SE Misconduct Inv. Weapon, F4	Guilty	Jury
5/22 - 5/24	Watson	Aceto	Schneider	CR05-137540-001SE 2 cts. Agg. Assault, F3D	Not Guilty	Jury
5/24 - 5/30	Little Ditsworth	Sanders	Kirka	CR05-013382-001DT 2 cts. Agg. Domestic Violence, F5	Directed Verdict	Jury

Jury and Bench Trial Results

May/June 2006

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Vehicular						
5/8 - 5/10	Timmer	Nothwehr	McDermott	CR05-133859-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
5/11 - 5/16	Timmer	Anderson	Cotter	CR03-010344-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
5/15 - 5/17	Mais	Akers	Garrow	CR05-136345-001DT 2 cts. Agg. Assault, F3 4 cts. Endangerment, F6 Drug Violation, F2 Forgery, F4	Dismissed by CA Dismissed by CA Guilty Guilty	Jury
5/16 - 5/18	Davis	Nothwehr	Goddard	CR05-030522-001SE 2.cts. Agg. DUI, F4 PODD, F4	Guilty 2 cts. Agg. Assault PODD dismissed by prosecution	Jury
5/17 - 5/24	Budge	Nothwehr	Keleman	CR05-005833-001DT 2.cts. Agg. DUI, F4	Guilty	Jury
5/18 - 5/19	Conter	Porter	McDermott	CR05-013383-001DT 2.cts. Agg. DUI, F4	Guilty	Jury
05/22 - 5/30	Timmer	Akers	V.Goddard	CR05-012417-001DT Manslaughter, F2	Guilty of Negligent Homicide Lesser Included	Jury
05/23 - 5/25	Iniguez	Anderson	McDermott	CR05-135332-001SE 2.cts. Agg. DUI, F4	Guilty	Jury
05/24 - 5/26	Souccar	Nothwehr	Smith	CR05-136512-001SE 2.cts. Agg. DUI, F4	Guilty	Jury
6/7 - 6/8	Conter	Nothwehr	Cotter	CR05-008988-001 2 cts. Agg. DUI, F4	Guilty	Jury
6/12 - 6/13	Timmer	Anderson	Salcido	CR05-012670-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
6/19 - 6/27	Sloan	Nothwehr	Foster	CR06-101649-001DT 2 cts. Agg. DUI, F4	Hung - 7 Guilty, 1 Not Guilty	Jury
6/27- 6/30	Conter	Nothwehr	Kelemen	CR05-012103-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
6/26 - 6/28	Budge	Anderson	Salcido	CR05-012655-001 3 cts. Agg. DUI Under 15, F6 Unlawful Flight, F5	Guilty - 3 cts. Agg DUI, Under 15; Not Guilty - Unlawful Flight	Jury

Jury and Bench Trial Results

May/June 2006

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Homicide						
4/3 - 5/23	Brown Stein Unterberger Ames Southern	Talamante	Martinez	CR01-092032 Murder 1st Degree, F1D Kidnap, F2D Armed Robbery, F2D Burglary 1st Degree, F2D	Guilty – Defendant Sentenced to Death	Jury

Legal Defender's Office

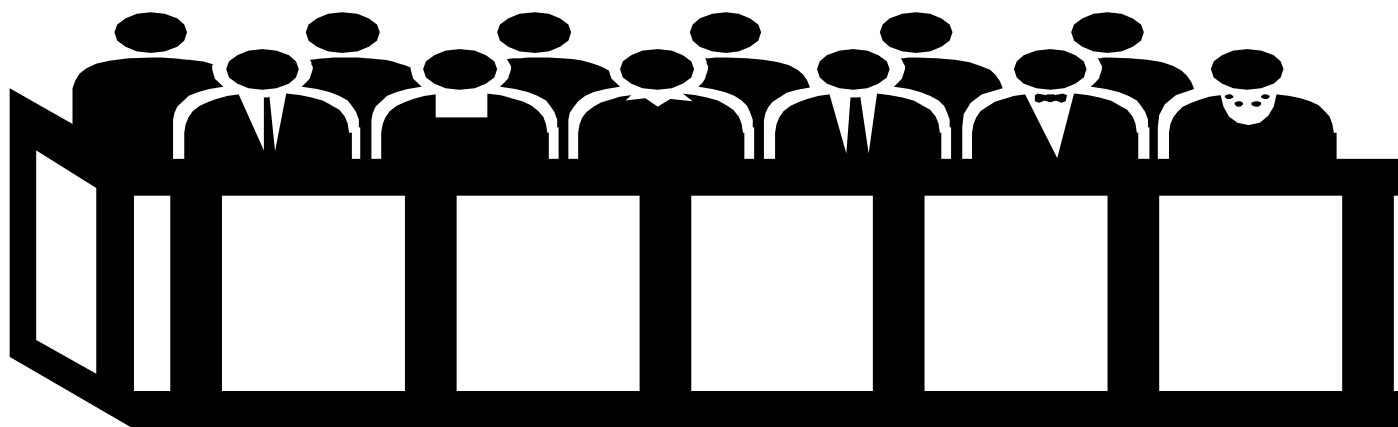
Dates: Start - Finish	Attorney Investigator <i>Mitigation/ Paralegal</i>	Judge	Prosecutor	Case # and Charges(s)	Result	Bench or Jury Trial
5/22 - 6/13	Cleary	Holt	Lynch	CR99-11546 Murder 1, F1	Not Guilty	Jury
6/08 - 6/15	O'Neal	Gottsfield	Lynn	CR05-013294-001 Burglary 2, F3 Agg Assault, F6	Not Guilty Burglary 2 Agg Assault Guilty Criminal Trespass 1 Assault	Jury
6/27 - 6/30	Gaunt	Franks	Smith	JD14668 Dependency Trial	Dependency Found	Bench
5/10 - 5/26	Tallan	Blakey	Clayton	CR04-023666-001 Murder 2, F1	Hung Jury (NG 7 - G 1)	Jury
5/15 - 5/17	Wilhite	Holt	Fan	CR04-023504-001 Drug Poss for Sale, F2	Mistrial	Jury

Jury and Bench Trial Results

May/June 2006

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
5/18 to 5/24	Agan Sinsabaugh	Klein	CR05-136271-001-DT F2 - Theft MOT	Hung Jury	Jury
5/8 to 5/9	Reinhardt	Comm. French	CR05-119562-001-DT Agg. Asst.-F3; Burg-F4 Poss. Of Burg. Tools; F6	Not Guilty on Agg. Ass.; Guilty on Burg. And Poss. Of Burg. Tools	Jury
6/1 to 6/29	Primack Prieto Stovall	Ishikawa	CR05-115930-001-DT 1st Deg Murder-F1 Drive By Shooting-F2 2 Cts-Agg. Asst-Dangerous-F3	Guilty on all counts	Jury
6/5 to 6/19	Peterson Mullavey Kelly	Blakey	CR03-015606-001-DT 3 Cts Sex Abuse-F3 4 Cts Moles. of Child-F2 10 Cts Sex Cond w/Minor-F2	Guilty on all counts	Jury



New Attorney Class - May 2006



Pictured from left to right: Jamal Allen - Pima Co. PD, Susan Anderson - Maricopa Co. LD, Gilbert Rosales - Pima Co. PD, David Teel - Maricopa Co. PD, John Flynn - La Paz Co. PD, Stephen Crawford - Maricopa Co. PD, Maria Dodge - Maricopa Co. PD, Matei Tarail - Pima Co. PD, Ashley Andrade - Maricopa Co. PD.

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for The Defense

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